

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JASON LEE SUTTON

Plaintiff,

v.

PIERCE COUNTY SHERIFF *et al.*,

Defendants

Case No. C07-5327RBL/JKA

ORDER DIRECTING SERVICE BY  
U.S. MARSHAL

This action, brought under 42 U.S.C. 1983, has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). The plaintiff has been granted leave to proceed *in forma pauperis*. In August of 2007, the court entered an order of service. One of the defendants, Gary Friedman, did not work at the address provided. In January of 2008, the court entered an order allowing plaintiff additional time to serve this defendant (Dkt # 26). In compliance with the court's order plaintiff sent additional service documents to the court. While the court received those documents there was nothing entered in the electronic file. The fact that the documents had been

1 received was not noted.

2 In May of 2008, plaintiff sent the court a letter regarding the service issue and a “legal  
3 notice.” (Dkt # 35 and 36). The court does not conduct business by notice. Plaintiff is informed that  
4 a motion would have been the proper filing. The court has the service documents and apologizes  
5 for the delay. The clerk is directed to effect service on defendant Friedman as provided below.

6 (1) Service by United States Marshal.

7 It is hereby ORDERED that the United States Marshal shall send the following to Gary  
8 Friedman by first class mail: a copy of the complaint and of this Order, two copies of the Notice of  
9 Lawsuit and Request for Waiver of Service of Summons, a Waiver of Service of Summons, and a  
10 return envelope, postage prepaid, addressed to the Clerk's Office. All costs of service shall be  
11 advanced by the United States. The Clerk shall assemble the necessary documents to effect service.

12 (2) Response Required

13 Defendants shall have **thirty (30) days** within which to return the enclosed Waiver of Service  
14 of Summons. Each defendant who timely returns the signed Waiver shall have **sixty (60) days** after  
15 the date designated on the Notice of Lawsuit to file and serve an answer or a motion directed to the  
16 complaint, as permitted by Rule 12 of the Federal Rules of Civil Procedure.

17 Any defendant who fails to timely return the signed Waiver will be personally served with a  
18 summons and complaint, and may be required to pay the full costs of such service, pursuant to Rule  
19 4(d)(2). A defendant who has been personally served shall file an answer or motion permitted under  
20 Rule 12 within **thirty (30) days** after service.

21 (3) Filing and Service by Parties, Generally.

22 All original documents and papers submitted for consideration by the court in this case, are to  
23 be filed with the Clerk of this court. The originals of all such papers shall indicate in the upper right-  
24 hand corner the name of the Magistrate Judge to whom the copies are to be delivered. The papers  
25 shall be accompanied by proof that such documents have been served upon counsel for the opposing  
26 party (or upon any party acting *pro se*). The proof shall show the day and manner of service and  
27 may be written acknowledgment of service, by certificate of a member of the bar of this court, or by

1 affidavit of the person who served the papers.

2 (4) Motions.

3 Any request for court action shall be set forth in a motion, properly filed and served. The  
4 motion shall include in its caption (immediately below the title of the motion) a designation of the  
5 Friday upon which the motion is to be noted upon the court's calendar. That date shall be the third  
6 Friday following filing of the motion (fourth Friday for Motions for Summary Judgment). All briefs  
7 and affidavits in opposition to any motion shall be filed and served not later than 4:30 p.m. on the  
8 Monday immediately preceding the Friday appointed for consideration of the motion. If a party fails  
9 to file and serve timely opposition to a motion, the court may deem any opposition to be without  
10 merit. The party making the motion may file, not later than 4:30 p.m. on the Thursday immediately  
11 preceding the Friday designated for consideration of the motion, a response to the opposing party's  
12 briefs and affidavits.

13 (5) Motions for Summary Judgment

14 If one of the parties files a motion for summary judgment pursuant to Federal Rules of Civil  
15 Procedure 56, the opposing party should acquaint him/herself with Rule 56. Rule 56 requires a  
16 nonmoving party to submit affidavits or other evidence in opposition to a motion for summary  
17 judgment if the moving party has shown the absence of issues of material fact and an entitlement to  
18 judgment as a matter of law. A nonmoving party may not rest upon the mere allegations or denials  
19 of prior pleadings. Rather, successful opposition to a motion for summary judgment requires the  
20 nonmoving party to set forth, through affidavits or other evidence, specific facts showing a genuine  
21 issue for trial. Failure by the nonmoving party to oppose a summary judgment motion or to present  
22 counter evidence could result in the Court accepting the moving party's evidence as the truth, and  
23 entering final judgment in favor of the moving party without a full trial. Rand v. Rowland, 113 F.3d  
24 1520 (9<sup>th</sup> Cir. 1997).

25 (6) Direct Communications with District Judge or Magistrate Judge

26 No direct communication is to take place with the District Judge or Magistrate Judge with  
27 regard to this case. All relevant information and papers are to be directed to the Clerk.

1 (7) Clerk's Action

2 The Clerk is directed to send a copy of this Order and of the General Order issued by the  
3 Magistrate Judges to plaintiff.

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5 DATED this 19 day of May, 2008.

6  
7 /S/ J. Kelley Arnold  
8 J. Kelley Arnold  
9 United States Magistrate Judge  
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